



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: April 29, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: Wisconsin Chapter 40.14 Fertilizer Content Deficiencies (Hearing Draft)

PRESENTED BY: Amy Basel and Robby Personette

REQUESTED ACTION:

At the May 13, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to standards for the nutrient content of fertilizer. This rule amends s. ATCP 40.14 (1) and (3), Wis. Admin. Code, which updates the economic value formula to more accurately reflect the actual economic value of fertilizer ingredients in the marketplace.

SUMMARY:

Background

DATCP is authorized to regulate the manufacture, distribution, labeling, and storage of fertilizer. Fertilizer is a substance that contains one or more recognized plant nutrients, is used for plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. See s. 94.64 (1) (e), Stats.

Under current fertilizer rules, a manufacturer or distributor that labels fertilizer is required to list percent guarantees of primary nutrients on the fertilizer's label. Primary nutrients consist of nitrogen ("N"), phosphorus ("P"), and potassium ("K"). Current rules also require that DATCP collect and analyze various samples of fertilizers.

Under current s. 40.16, Wis. Admin. Code, the department will analyze a fertilizer sample to determine if the content of the sample meets the guarantees of N, P, and K listed on the label. If the sample tested is found to be deficient in content of N, P, or K because it fails to meet one or more of the three standards in the rule, then the fertilizer is considered "misabeled" under s. ATCP 40.14 (1), Wis. Admin. Code.

The third standard requires that the economic value of primary nutrients actually present be not less than 98% of the economic value of the amounts guaranteed, where economic value is calculated according to s. ATCP 40.14 (3), Wis. Admin. Code. s. 40.14(1)(c), Stats. The formula contained in s. ATCP 40.14 (3), Wis. Adm. Code is based upon wholesale prices for the nutrients.

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Economic Value

After convening a group of representatives of the fertilizer industry and agrichemical associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

Rule Content

The proposed rule does the following:

1. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} +
{[available phosphate (P₂O₅) guarantee] x 2} + {soluble potash (K₂O) guarantee}

to

Amended formula: Economic value = {total nitrogen (N) guarantee} +
{available phosphate (P₂O₅) guarantee} + {soluble potash (K₂O) guarantee}

The proposed formula more accurately reflects the actual economic value of fertilizer ingredients in the marketplace than the current economic value formula, which was developed over forty years ago.

2. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

Federal and Surrounding State Programs

Federal Programs

There are no federal regulations related to this rule.

Surrounding State Programs

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO

principles and have similar basic laws which benefits consumers and fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

Illinois

In addition to the total combined value of the fertilizer, the value for each fertilizer ingredient is deficient if the actual amount is 97% or less than the guarantee.

Iowa

The economic value (called relative value) is determined based on a formula that is identical to the current Wisconsin requirements.

Michigan

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the values per unit of each nutrient.

Minnesota

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

Summary of Factual Data and Analytical Methodologies

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. Some members of this group previously had brought to the department its concerns over the economic value calculation that has been in use by the department since the 1970s. They questioned the effects that the current pricing structure has on the labeling of fertilizer content, when compared with how prior pricing models had affected the calculation of the economic value on numerous fertilizer blends over recent years.

The department responded by reviewing the current relative average wholesale prices for primary plant nutrients N, P, and K. At the listening session, the representatives were presented information gathered from the United States Department of Agriculture (USDA) concerning statistics on fertilizer ingredient pricing, shown the variations of pricing that has occurred throughout a number of years, and the hypothetical results if a different formula for economic value were used and compared those results with the current economic value formula. The formula used to determine the economic value of the fertilizers was no longer found to be accurate in relation to the multipliers that were being used for the primary nutrients N and P. Additionally, it was found that the prices for these primary nutrients, as well as that of K, were similar to one another.

The department also listened to concerns over the value used in calculating the threshold percentage of the economic value guarantee. In an effort to address variations such as granular size, overall availability of nutrients, and the lack of consistency between lots of primary nutrients, it was recommended that the percentage be changed to a number that reflects current industry practices. The department demonstrated to the group using hypothetical results how the change from the current threshold percentage of 98% to 97% would bring the product's economic value guarantee in line with current product economic value guarantees. This change would take into account the variation in granular size, and the lack of consistency between lots of primary nutrients, while continuing to ensure that the fertilizer contains the nutrients guaranteed on the product label.

Fiscal Impact

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify existing regulations and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete *fiscal estimate* is attached.

Business Impact

The proposed rule will continue to benefit certain small businesses such as farmers, landscape and lawncare companies, farm supply stores, and cooperatives. This rule revision is designed to update the formulas used in analyzing fertilizer for its economic value and content deficiencies. This rule will continue to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect updated fertilizer ingredient costs.

There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawncare businesses, and manufacturers of nonagricultural and specialty fertilizers.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers by continuing to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect current fertilizer ingredient costs.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. A business analysis ("initial regulatory flexibility analysis") is attached.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold a public hearing on the date and at the location specified in the hearing notice. The hearing date and location have not yet been determined.

Following the public hearing, DATCP will prepare a final draft rule for the Board's consideration. Under current law, if the Board approves that final draft rule, then DATCP will transmit that rule to the Governor for written approval. If approval is obtained, DATCP will submit the rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
AMENDING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to amend ATCP 40.14 (1) (c) and (3), relating to the manufacture and
- 3 distribution of fertilizer.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates the manufacture and sale of fertilizer, pursuant to s. 94.64 Stats. DATCP regulates fertilizer to protect farmers and consumers against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of products, deceptive ingredient and performance claims, and latent safety hazards.

This rule updates standards for the nutrient content of fertilizer.

Statutes Interpreted

Statutes interpreted: s 94.64, Stats.

Statutory Authority

Statutory authority: ss. 93.07 (1), and 94.64 (9), Stats.

Explanation of Agency Authority

DATCP has authority under s. 93.07 (1), Stats., to make regulations as necessary for the proper enforcement of Chapters 93 to 100, Stats., including the administration of the fertilizer program under s. 94.64, Stats. DATCP has express authority to promulgate rules regulating the sale and labeling of fertilizer, governing methods of sampling, testing fertilizer and prescribing the manner in which grade and guaranteed analysis are declared on the product label. See s. 94.64 (9), Stats.

Related Rules or Statutes

Wisconsin statutes and rules relating to the manufacture, distribution, and use of fertilizer are set forth in ss. 94.64 to 94.645, Stats. and ch. ATPC 40, Wis. Admin. Code.

Plain Language Analysis

This proposed rule amends s. ATPC 40.14 (1) and (3), Wis. Admin. Code, relating to fertilizer content deficiencies.

Background

DATCP is authorized to regulate the manufacture, distribution, labeling, and storage of fertilizer. Fertilizer is a substance that contains one or more recognized plant nutrients, is used for plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. See s. 94.64 (1) (e), Stats.

Under current fertilizer rules, a manufacturer or distributor that labels fertilizer is required to list percent guarantees of primary nutrients on the fertilizer's label. Primary nutrients consist of nitrogen ("N"), phosphorus ("P"), and potassium ("K"). Current rules also require that DATCP collect and analyze various samples of fertilizers.

Under current s. 40.16, Wis. Admin. Code, the department will analyze a fertilizer sample to determine if the content of the sample meets the guarantees of N, P, and K listed on the label. If the sample tested is found to be deficient in content of N, P, or K because it fails to meet one or more of the three standards in the rule, then the fertilizer is considered "mislabelled" under s. ATPC 40.14 (1), Wis. Admin. Code.

The third standard requires that the economic value of primary nutrients actually present be not less than 98% of the economic value of the amounts guaranteed, where economic value is calculated according to s. ATPC 40.14 (3), Wis. Admin. Code. The formula contained in s. ATPC 40.14 (3), Wis. Adm. Code is based upon wholesale prices for the nutrients.

Economic Value

After convening a group of representatives of the fertilizer industry and agrichemical associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

Rule Content

The proposed rule does the following:

1. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATCP 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

Current formula: Economic value = {[total nitrogen (N) guarantee] x 2} + {[available phosphate (P₂O₅) guarantee] x 2} + {soluble potash (K₂O) guarantee}

to

Amended formula: Economic value = {total nitrogen (N) guarantee} + {available phosphate (P₂O₅) guarantee} + {soluble potash (K₂O) guarantee}

The proposed formula more accurately reflects the actual economic value of fertilizer ingredients in the marketplace than the current economic value formula, which was developed over forty years ago.

2. The proposed rule changes the standard in s. ATCP 40.14 (1) (c), Wis. Admin. Code, for the economic value formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

Comparison with Existing or Proposed Federal Statutes and Regulation

There are no established federal laws regulating the content deficiencies for fertilizer, although there is regulation by other states (see below).

Comparison with Rules in Adjacent States

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefit consumers and fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

Illinois

In addition to the total combined value of the fertilizer, the value for each fertilizer ingredient is deficient if the actual amount is 97% or less than the guarantee.

Iowa

The economic value (called relative value) is determined based on a formula that is identical to the current Wisconsin requirements.

Michigan

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the values per unit of each nutrients.

Minnesota

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

Summary of Factual Data and Analytical Methodologies

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. Some members of this group previously had brought to DATCP its concerns over the economic value calculation that has been in use by DATCP since the 1970s. They questioned the effects that the current pricing structure has on the labeling of fertilizer content, when compared with how prior pricing models had affected the calculation of the economic value on numerous fertilizer blends over recent years.

DATCP responded by reviewing the current relative average wholesale prices for primary plant nutrients N, P, and K. At the listening session, the representatives were presented information gathered from the United States Department of Agriculture (USDA) concerning statistics on fertilizer ingredient pricing, shown the variations of pricing that has occurred throughout a number of years, and the hypothetical results if a different formula for economic value were used and compared those results with the current economic value formula. The formula used to determine the economic value of the fertilizers was no longer found to be accurate in relation to the multipliers that were being used for the primary nutrients N and P. Additionally, it was found that the prices for these primary nutrients, as well as that of K, were similar to one another.

The department also listened to concerns over the value used in calculating the threshold percentage of the economic value guarantee. In an effort to address variations such as granular size, overall availability of nutrients, and the lack of consistency between lots of primary nutrients, it was recommended that the percentage be changed to a number that reflects current industry practices. The department demonstrated to the group using hypothetical results how the change from the current threshold percentage of 98% to 97%

would bring the product's economic value guarantee in line with current product economic value guarantees. This change would take into account the variation in granular size, and the lack of consistency between lots of primary nutrients, while continuing to ensure that the fertilizer contains the nutrients guaranteed on the product label.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

DATCP considered data on wholesale nutrient prices obtained from USDA during its listening session (See Summary of Data and Analytical Methodologies, above), as well as any comments received through the economic impact analysis comment period.

Fiscal Impact

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify existing regulations and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate is attached.

Effects on Small Business

DATCP anticipates that this rule revision will have no negative economic impact on small business. The proposed rule will continue to benefit certain small businesses such as farmers, landscape and lawncare companies, farm supply stores, and cooperatives. This rule revision is designed to update the formulas used in analyzing fertilizer for its economic value and content deficiencies. This rule will continue to prevent unfair and deceptive sales practices, while adjusting formulas used to reflect updated fertilizer ingredient costs.

There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawncare businesses, and manufacturers of nonagricultural and specialty fertilizers.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers, by continuing to prevent unfair and deceptive sales practices while adjusting formulas used to reflect current fertilizer ingredient costs.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22 (2) (e), Stats. A business analysis ("initial regulatory flexibility analysis") is attached.

DATCP Contact Information

Questions and comments related to this rule may be directed to:

Ms. Amy Basel
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4541
E-mail: amy2.basel@wisconsin.gov

1 **SECTION 1.** ATCP 40.14 (1) (c) is amended to read:

2 ATCP 40.14 (1) (c) The economic value of primary nutrients actually present is
3 less than ~~98%~~ 97% of the economic value of the amounts guaranteed, where economic
4 value is calculated according to sub. (3).

5 **SECTION 2.** ATCP 40.14 (3) is amended to read:

6 ATCP 40.14 (3) ECONOMIC VALUE. Economic value, for purposes of sub. (1) (c),
7 equals {{total nitrogen (N) guarantee \times 2}} + {{available phosphate (P₂O₅) guarantee \times
8 2}} + {soluble potash (K₂O) guarantee}.

9 **SECTION 3. EFFECTIVE DATE.** This rule takes effect on the first day of the month
10 following publication in the Wisconsin administrative register, as provided under s.
11 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, 2015

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel
Secretary

**Wisconsin Department of Agriculture, Trade and
Consumer Protection**

Initial Regulatory Flexibility Analysis

Rule Subject: Fertilizer Content Deficiencies
Adm. Code Reference: ATCP 40
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 14-R-14

Rule Summary

This rule modifies the existing s. ATCP 40.14, Wis. Admin. Code, in two ways. The rule:

- Changes the requirement that the economic value of primary nutrients actually present must be less than 97%, rather than 98%, of the economic value of the amounts guaranteed; and
- Updates the economic value formula used to determine the value of primary fertilizer nutrients nitrogen, phosphorus, and potassium, based on the current wholesale prices of those nutrients.

The change in percentage in the rule will bring Wisconsin's formula in conformity with states such as Minnesota and Illinois. The change to the economic value formula will more accurately reflect the relative economic value of fertilizer nutrients in the current marketplace than the economic value formula presently in the rule, which was developed over forty years ago.

Impact on Small Business

DATCP anticipates that this rule revision will have no negative economic impact on small business. There are approximately 700 persons licensed to manufacture or distribute fertilizers in Wisconsin. Affected businesses include farm centers and cooperatives, and manufacturers of nonagricultural and specialty fertilizers. Up to 30% of these license holders may be small businesses. Those businesses that manufacture or otherwise label fertilizers will benefit from this proposed rule because their fertilizer products are less likely to be considered "misabeled" due to use of a formula that relies upon relative nutrient values based on costs from the 1970s.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers by continuing to ensure accurately labeled fertilizer products.

Reporting, Bookkeeping and other Procedures

The proposed rule creates no reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any professional skills for small businesses.

Accommodation for Small Business

This rule does not make special accommodations for small business because no fertilizer business, large or small, is expected to need to change any manufacturing or labeling practices due to this rule.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." No negative effects are expected. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 29th day of April, 2015.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Chapter ATPC 40, Fertilizer and Related Products

3. Subject

Fertilizer Content Deficiencies

4. Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115 (7)(r)

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☒ Small Businesses (If checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

After convening a group of representatives of the fertilizer industry and agrichemical associations, and reviewing recent data concerning the wholesale prices of primary nutrients, the group concluded that the existing rule contains an outdated formula for the economic value of fertilizer. That formula was based on average wholesale prices of primary plant nutrients prior to its enactment in the 1970s.

The proposed rule does the following:

1. In place of the 2:2:1 ratio of N, P, and K, in the current s. ATPC 40.14 (3), Wis. Admin. Code, the proposed rule substitutes a ratio 1:1:1 of N, P, and K:

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2. The proposed rule changes the standard in s. ATPC 40.14 (1) (c), Wis. Admin. Code, for the economic value formula, so that the guarantee percentage, which currently is listed in the rule as 98%, is reduced to 97%. This conforms to the department's prior guarantee percentage in the rule, and is consistent with the percentage used by other states, such as Minnesota and Illinois.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

DATCP developed this rule in consultation with an industry working group that included representative members from agricultural associations and fertilizer manufacturers and distributors. A listening session was held with representatives of multiple agrichemical associations, fertilizer manufacturers and suppliers. Some members of this group previously had brought to the department its concerns over the economic value calculation that has been in use by the department since the 1970s.

No public comments concerning the economic impact of this proposed rule were received on either the DATCP external website or the statewide administrative rules website.

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11. Identify the local governmental units that participated in the development of this EIA.

None. No impact on local governmental units is anticipated.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will positively impact fertilizer manufacturers and distributors. There are approximately 700 Wisconsin businesses licensed to manufacture or distribute fertilizers, including farm centers and cooperatives. This rule will allow for a variance from the label guarantee that is based on current relative market values of primary nutrients, rather than the relative market values of primary nutrients during the 1970s. The anticipated impact is that a lower percentage of fertilizer products tested by the department will be considered "misabeled" because the formula has been adjusted to account for updated nutrient prices. This rule will continue to benefit farmers by preventing deceptive sales practices due to mislabeled fertilizer. No implementation or compliance costs are expected to be incurred by these businesses. Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole are not expected to be impacted economically by this rule.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Fertilizer manufacturer and distributor businesses will benefit from the alignment of the economic value formula with current fertilizer input costs. (See no. 12, above.) Additionally, farmers and other consumers of fertilizer would benefit from accurately labeled fertilizer products. If DATCP does not adopt this rule, there will continue to be an outdated formula in use to determine the overall fertilizer content value, giving a weighted cost to plant nutrients that have since equalized in cost.

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14. Long Range Implications of Implementing the Rule

It is not anticipated that there will be any long-term implications in the implementation of this rule. The variances in overall fertilizer content values and the formula used in determining the economic index value of

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

the fertilizer product will continue to protect fertilizer consumers from mislabeled fertilizer products. Additionally, DATCP will continue to conduct periodic wholesale price surveys in an effort to ensure that all multipliers used in the economic index value formula are comparable with current industry practices.

15. Compare With Approaches Being Used by Federal Government

Currently, the Federal Government has no significant oversight of fertilizer products.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO) to promote uniform state laws related to fertilizer. Most surrounding states follow AAPFCO principles and have similar basic laws which benefits consumers and fertilizer manufacturers and distributors doing business in multiple states. However, there are minor variations in fertilizer regulations between states.

Illinois

In addition to the total combined value of the fertilizer, the value for each fertilizer ingredient is deficient if the actual amount is 97% or less than the guarantee.

Iowa

The economic value (called relative value) is determined based on a formula that is identical to the current Wisconsin requirements.

Michigan

Michigan has adopted the AAPFCO requirements that deem fertilizer deficient if the overall index value of the fertilizer is below 98%. The overall index value is calculated by comparing the guarantee of the nutrients to the actual value found within the sample. Michigan uses unit values for each of the fertilizer nutrients. These values vary and are based on annual publications of the values per unit of each nutrients.

Minnesota

Minnesota uses the same formula and multipliers as the current Wisconsin requirements, but considers a fertilizer deficient if the overall economic value is below 97% of the guaranteed value.

17. Contact Name

Amy Basel

18. Contact Phone Number

608-224-4541

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

-
1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

No Implementation or Compliance Costs and no negative Fiscal Impact to Small Businesses are expected.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Information submitted on behalf of the various members in attendance at the listening session held on February 2, 2015, was used in determining the proposed rule changes. These members included representatives from the fertilizer manufacturer, and distribution sectors, along with multiple industry association representatives. These industry associations are direct representatives for various businesses within the fertilizer sale/production/distribution sectors, up to thirty percent of whom are considered small businesses. The department also presented information gathered from the United States Department of Agriculture concerning statistics on fertilizer ingredient pricing and variations of pricing that has occurred throughout a number of years.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements
☒ Other, describe:

The proposed changes would not affect any reporting, design, or operational standards that are currently being used for the manufacturing, distribution and sales of a fertilizer product.

-
4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

None. The Department does not anticipate that the rule change will create a need for any fertilizer businesses, regardless of size, to change their current practices.

-
5. Describe the Rule's Enforcement Provisions

The enforcement provisions within the current rule will not change.

-
6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No
